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B-165239, Oct. 4, 1968

Number: B-165239

Date: 1968-10-04

B-165239, OCT. 4, 1968

TO MR. LESTER H. THOMPSON:

REFERENCE IS MADE TO YOUR LETTER OF SEPTEMBER 9, 1968, ASKING WHETHER THE VOUCHER AND SCHEDULE OF PAYMENTS, SCHEDULE NO. MC 0052 FORWARDED THEREWITH PROPERLY MAY BE CERTIFIED FOR PAYMENT.

THE VOUCHERS LISTED ON THE SCHEDULE ARE STATED IN FAVOR OF THE CORNING GLASS WORKS EMPLOYEES FEDERAL CREDIT UNION, CORNING, NEW YORK, IN THE AMOUNT OF $331.25, AND THE MERCANTILE NATIONAL BANK, CORPUS CHRISTI, TEXAS, IN THE AMOUNT OF $2,748.80. IT IS EXPLAINED THAT BOTH OF THE PAYEE INSTITUTIONS HOLD CREDIT INSURANCE CONTRACTS WITH THE FEDERAL HOUSING ADMINISTRATION PURSUANT TO TITLE I OF THE NATIONAL HOUSING ACT, 12 U.S.C. 1703, AND THAT THE AMOUNTS INVOLVED REPRESENT INSURANCE PROCEEDS CLAIMED BECAUSE OF DEFAULTED LOANS.

WITH REGARD TO THE MERCANTILE NATIONAL BANK IT IS REPORTED THAT ON FEBRUARY 15, 1967, THE BANK MADE A LOAN IN THE NET AMOUNT OF $3,176, TO RAUL VALDEZ. THIS LOAN WAS LISTED ON A MANIFEST FORWARDED TO THE FEDERAL HOUSING ADMINISTRATION ON THAT SAME DATE. BECAUSE THE MANIFEST CARRIED AN INCORRECT CONTRACT NUMBER THE LOAN WAS NOT INSURED. THE BANK, HOWEVER, WAS NOT AWARE THAT THE LOAN WAS NOT INSURED AND DID NOT DISCOVER SUCH FACT UNTIL IN NOVEMBER 1967, UPON A RECONCILIATION OF ITS ACCOUNTS.

FOLLOWING SUCH DISCOVERY, THE BANK RESUBMITTED ITS MANIFEST FOR INSURANCE REGISTRY WHICH INCLUDED THE VALDEZ LOAN. THIS MANIFEST WAS REGISTERED FOR INSURANCE ON THE DECEMBER 31, 1967, MONTHLY STATEMENT. IN THE MEANTIME, HOWEVER, THE VALDEZ LOAN HAD BEEN IN DEFAULT SINCE SEPTEMBER 1, 1967, AND QUESTION ARISES AS TO WHETHER THE BANK'S CLAIM FOR INSURANCE PROCEEDS NOW PROPERLY MAY BE HONORED.

PERTINENT TO SUCH QUESTION ARE THE PROVISIONS OF SECTION 201.10 OF THE REGULATIONS, 24 CFR 201.10, ISSUED PURSUANT TO SECTION 2 (H) OF THE NATIONAL HOUSING ACT, 12 U.S.C. 1703 (H). SUCH SECTION OF THE REGULATIONS PROVIDES IN PART AS FOLLOWS:

"LOANS SHALL BE REPORTED ON THE PRESCRIBED FORM TO THE FEDERAL HOUSING ADMINISTRATION AT WASHINGTON, D.C., WITHIN 31 DAYS FROM THE DATE OF THE NOTE OR DATE UPON WHICH IT WAS PURCHASED. * * * IN ANY CASE, THE COMMISSIONER MAY, IN HIS DISCRETION, ACCEPT A LATE REPORT.'

THE MANIFEST WHEN ORIGINALLY AND TIMELY REPORTED FOR INSURANCE SHOWED THE CORRECT ADDRESS OF THE MERCANTILE NATIONAL BANK OF CORPUS CHRISTI, TEXAS, AND A

CONTRACT NUMBER OF A BANK IN CALIFORNIA. WHEN THE MERCANTILE NATIONAL BANK COULD NOT LOCATE THE TITLE I LOAN STATEMENT SHOWING THE INITIAL INSURANCE CHARGES COVERING THIS LOAN, IT SENT PHOTOSTATIC COPIES OF THE ORIGINAL TITLE I LOAN REPORTING MANIFEST TO FHA BY LETTER OF NOVEMBER 13, 1967, AND ASKED FHA TO CHECK ITS RECORDS. FHA CORRECTED THE CONTRACT NUMBER ON THE DUPLICATE MANIFESTS, PLACED THEM IN PROCESS FOR INSURANCE REGISTRY, AND SO ADVISED THE BANK BY LETTER OF NOVEMBER 27, 1967. THERE IS NOTHING IN THE RECORD TO INDICATE THAT FHA WOULD NOT HAVE DONE THE SAME THING WHEN THE ORIGINAL MANIFEST WAS SUBMITTED IF IT HAD NOTED THE OBVIOUS DISCREPANCY BETWEEN THE CONTRACT NUMBER AND THE ADDRESS OF THE BANK. SINCE THE BANK APPARENTLY WAS NOT ADVISED OF ITS MISTAKE, BELIEVED THAT THE LOAN WHICH HAD BEEN TIMELY REPORTED WAS INSURED AND OTHERWISE SUBSTANTIALLY COMPLIED WITH ALL OF THE REGULATIONS OF FHA, WE WOULD RAISE NO OBJECTION IF ITS SUBSEQUENT REPORT IS ACCEPTED AS A LATE REPORT UNDER THE REGULATIONS QUOTED ABOVE.

WITH RESPECT TO THE CLAIM BY THE CORNING GLASS WORKS EMPLOYEE FEDERAL CREDIT UNION THE RECORD SHOWS THAT THE CREDIT UNION MADE A LOAN OF $600 TO EARL DEAN, EVIDENCED BY A NOTE DATED JULY 13, 1965. THIS LOAN WAS TIMELY REPORTED FOR INSURANCE BUT IT ALONG WITH SIX OTHERS WERE LISTED ON AN AUGUST 31, 1965, EXCEPTION STATEMENT. TWO OTHER LOANS WERE LISTED ON THE FOLLOWING MONTH'S EXCEPTION STATEMENT AND BY LETTER OF NOVEMBER 19, 1965, THE CREDIT UNION ASKED FOR AN EXPLANATION OF SUCH EXCEPTIONS.

FHA REPLIED TO SUCH LETTER ON DECEMBER 3, 1965, EXPLAINING THAT THE LOANS WERE REJECTED FOR INSURANCE BECAUSE THE PERIODIC PAYMENTS MULTIPLIED BY THE NUMBER OF PAYMENTS DID NOT AGREE WITH THE FACE AMOUNT OF THE NOTES AND ADVISED THE CREDIT UNION TO RESUBMIT THE TRANSACTIONS CORRECTLY ON ITS NEXT MANIFEST. IN LETTER DATED DECEMBER 10, 1965, THE CREDIT UNION STATED THAT IT WAS STILL CONFUSED ABOUT THE ERROR. SUBSEQUENTLY, ALL SEVEN LOANS PREVIOUSLY REJECTED ON AUGUST 31, 1965, WERE RESUBMITTED AND REGISTERED FOR INSURANCE ON THE JANUARY 31, 1967 STATEMENT. IN THE MEANTIME THE LOAN HAD BEEN IN DEFAULT FROM THE INSTALLMENT DUE ON JULY 30, 1966.

SINCE THE LENDER THUS HAD BEEN FULLY INFORMED REGARDING THE REJECTION OF THIS LOAN FOR INSURANCE BUT DELAYED MORE THAN A YEAR BEFORE RESUBMITTING IT WHICH WAS SIX MONTHS AFTER THE LOAN WAS IN DEFAULT, WE SEE NO PROPER BASIS ON WHICH THE CREDIT UNION'S CLAIM NOW CAN BE ALLOWED.

THE VOUCHER AND SCHEDULE OF PAYMENTS FORWARDED WITH YOUR LETTER MAY NOT BE CERTIFIED IN ITS PRESENT FORM AND THEREFORE IS RETAINED.